Case No. 588.

REPLY IN BEHALF OF THE COMMISSION TO SUPPLEMENTAL BRIEF OF COUNSEL FOR CARRIERS.

If counsel for the carriers had the framing of a code of what he calls "transportation laws," it is evident from those presented by him in his supplemental brief, he would only include such as favored the carriers and ignore such as have due regard to the interests of the public.

The twelve "rules or laws of transportation" formulated by him and set forth in his supplemental brief, are wholly inapplicable to this case (No. 588), because they ignore the facts, that it is the ADVANCE in the rate of which complaint is made and that the rate in force prior to the advance is not the subject of complaint, and, also, because they *assume* that the rate complained of is the result of competition, when the positive proof is that it was made by agreement or previous understanding between the defendants. (See original printed argument for the Commission of L. A. Shaver, pp. 17–19.)

If counsel for the carriers by his urgent appeal can induce this court to undertake the task of framing a code of transportation rules or laws, we suggest that the following should be incorporated in that code:

RULE I.

Bona fide and unrestrained competition can not advance rates. "The natural, direct, and immediate effect of competition is to lower rates." (171 U. S., 577.)

RULE II.

An advance of a previously existing rate, which was the product of competition and therefore presumed to be reasonably low, may result in an excessive rate, and it will be so held unless just grounds for the advance are shown by the carrier.

RULE III.

Where carriers by previous understanding or agreement make an advance in rates, the advance so made can not be held to be the product of unrestrained competition. The previously existing rates may have been the result of competition, but the advance can not be held to be the result of competition.

RULE IV.

Where carriers advance a rate long maintained and, when called on to explain, set up insufficient grounds therefor, the presumption is that such advance is unjust and unreasonable.

RULE V.

The burden of justifying an advance in a rate is upon the carrier, because, among other things, the grounds of justification lie "peculiarly within the knowledge" of the carrier.

RULE VI.

The test of the reasonableness of a rate is not the amount of profit in the business of the shipper, but whether or not the rate yields a reasonable return for the services rendered. "The public is entitled to demand that no more be exacted from it for the use of a public highway than the services rendered are reasonably worth." (169 U. S., 466.)

RULE VII.

Carriers have no right to participate in the prosperity of shippers by an *advance in rates.* They necessarily and properly participate in that prosperity by the increased business resulting to them therefrom. *The carriers to a large extent build up the country and in return the country builds up and sustains the carriers.*

RULE VIII.

There may be a large margin between a reasonable rate and a prohibitory rate, and traffic will move under rates until they reach the point of becoming absolutely prohibitory.

RULE IX.

The theory that a carrier has a right to exact "*all that the traffic will bear*", is not a correct theory of rate making. If sanctioned by the courts and put in force by carriers, it will result in making shippers or the public mere "hewers of wood and drawers of water" for the carriers.

RULE X.

Where the excess of the gross earnings of a carrier over its operating expenses has grown from year to year to such an extent as to result in a constant and material increase in net earnings, the fact that the percentage of operating expenses (including expenditures for permanent improvements) to gross earnings has grown to some extent does not *per se* justify an advance in the rates *charged the public*. (See original printed argument of L. A. Shaver for appellee, pp. 13, 18.)

RULE XI.

If there be a "normal proportion" of net earnings to gross earnings, the burden is upon the carrier to show what that proportion is. Net earnings can not be expected to increase in direct proportion to gross earnings. (138 Fed. Rep., 766.)

RULE XII.

If money to buy or pay for permanent improvements, such as real estate, rights of way, depot buildings, etc., is raised by advancing rates *charged the public*, then the public is made to furnish to the extent of such advance the capital or plant of the carriers and should be treated as part owner thereof or should be remunerated by the issuance of stock to the shipper.

RULE XIII.

The carrier has no right to make the rate *charged the public* dependent upon operating expenses when there is included in those expenses large expenditures for permanent improvements.

RULE XIV.

If additional revenue is needed to meet increased operating expenses incurred in the handling and transporting *of all traffic*, it should be raised by an advance in rates on traffic in general and the imposition of the burden on a comparatively few articles like lumber, is a discrimination against those articles in favor of traffic in general.

RULE XV.

If, in such case, it is proper to select a few articles, the selection should be made with due regard to the character of the traffic selected and the interests of the public. *The public is a party in interest.*

RULE XVI.

Lumber being an article of general use or necessity should not have been selected. (For other reasons why, see printed argument of L. A. Shaver, for appellee, pp. 28–32; also printed argument of T. M. Miller, for appellee, pp. 206–209.)

RULE XVII.

In order to show the reasonableness of a rate in question by comparing that rate with rates of other carriers operating in the same or different sections of country, it is necessary to prove that the circumstances and conditions attending the transportation under the latter rates are substantially similar to those attending the transportation under the former. (See printed argument of Mr. T. M. Miller, pp. 179–181.)

RULE XVIII.

In such case it is further necessary to show that the rates with which comparison is made are *per se* just and reasonable—in other words, that they are correct and proper *standards* of comparison, and the burden is upon the party setting up such standards to affirmatively show their correctness.

RULE XIX.

Rates made by agreement between carriers, and not the product of competition, can not be taken as *proper standards of comparison*.

RULE XX.

Distance or length of haul is an important element to be considered in fixing rates, and where a carrier exacts the same rate for a haul of 412 miles as for a haul of 730 miles, the presumption is that in the former case the rate is unreasonable.

RULE XXI.

If, as contended by counsel for the carriers, the advanced rate (16 cents) for the haul of 730 miles from Georgia to Cairo is reasonable, then it is unreasonable for the haul of 412 miles from Mississippi territory to Cairo.

RULE XXII.

Common carriers are quasi-public corporations deriving their franchises, or, in the language of this court, "their right to exist," from the public.

A railroad corporation, therefore, has a public duty to perform as well as a private interest to subserve, and in making rates to be charged the public can not act "solely with a view to its own interests and ignore the rights of the public." (169 U. S., 544; 164 U. S., 596, 597; original printed argument of L. A. Shaver, pp. 31, 32.)

II.

THE TWELVE RULES SET FORTH IN THE SUPPLEMENTAL BRIEF OF COUNSEL FOR THE DEFENDANTS.

We have not time to discuss separately and fully the twelve rules formulated by counsel for the carriers and set forth in his supplemental brief. Moreover, we do not deem it necessary in view of the twenty-two rules which we have formulated and set forth above.

Attention will, however, be briefly called to Rule I of counsel for the carriers. It is as follows:

"Where a rate upon a particular commodity is duly published and filed by a carrier with the Interstate Commerce Commission, the presumption is that it is *reasonably low*, and the burden is upon the party who insists that it is unreasonably high."

While the presumption may be, as stated in the above rule, that such rate is "*reasonably low*," the presumption also is that such rate is *reasonably high*. "*The presumption will always be that the compensation charged for a service or thing is sufficient to be reasonable.*" (85 Fed. Rep., bot. p. 114.)

The burden is upon the carrier to justify an *advance* in a rate presumed to be *already reasonably high*.

III.

INCREASED TAX UPON LUMBER MANUFACTURING INTERESTS BY THE ADVANCE IN THE RATE COMMENSURATE WITH ANY LOSS THE CARRIERS WILL SUSTAIN BY THE DOING AWAY WITH THAT ADVANCE.

Counsel for the carriers claims that the doing away with the 2 cents advance in the rate will result in an annual reduction of the revenue of the carriers to the extent of $230,000.

If this be so it follows that by advancing the rate the carriers laid an increased burden upon the lumber mill business of $230,000.

It is thus seen that the advance in rate imposed an additional tax upon the lumber mill men commensurate with any loss the carriers can sustain by canceling that advance.

IV.

Attention is asked to what is said in my original printed argument, p. 23, as to "TAP LINE ALLOWANCES," and on pages 24–26, as to proportions of through rate allowed "ORIGINATING ROADS."

The particular attention of the court is also called to the able and thorough printed arguments filed in behalf of the appellee by Messrs. Green & Green and T. M. Miller, esq.

Respectfully submitted.

By L. A. SHAVER,
For Appellee.

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